

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

* Case No. 08-MJ-361(JMA)

*

* Brooklyn, New York

* April 15, 2008

*

v.

*

MICHAEL A. IVERY,

*

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR IDENTITY HEARING
BEFORE THE HONORABLE VIKTOR V. POHORELSKY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government:

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Asst. United States Attorney

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For the Defendant:

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Proceedings recorded by electronic sound recording,
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1 (Proceedings commenced at 2:51 p.m.)

2 THE CLERK: Criminal cause for identity
3 hearing, Case No. 08-361-M, United States versus Michael
4 Ivery.

5 Counsel, please state your name for the record.

6 MR. PAES: Winston Paes for the United States.
7 Good afternoon, Your Honor.

8 MR. MORRIS: Douglas Morris, Federal Defenders for
9 Mr. Ivery. Good afternoon, Judge.

10 THE COURT: Good afternoon. I understand that an
11 identity hearing has been scheduled for today.

12 MR. MORRIS: That's correct.

13 THE COURT: So is the government prepared to
14 proceed?

15 MR. PAES: Yes, Your Honor, we are. I would like
16 to just bring one matter to the Court's attention. When
17 Judge Azrack scheduled Tuesday for the identity hearing, she
18 did realize it was a very short time for the government.

19 And although we are prepared to go forward with it
20 and we believe we have enough evidence to go on it, the case
21 agent is not -- is out of state today. So if at the end of
22 it, we -- if the Court feels we haven't proved enough, we'd
23 like to request an extension.

24 MR. MORRIS: Your Honor, if I just might mention.
25 The issue as it was -- as I understood it, was raised on

1 Friday, was an issue about the case agent having knowledge in
2 regard to the identifying information about my client in
3 paragraph 3 of the complaint about who he -- the person
4 who -- about my client's identity.

5 And we are not going to contest the allegations
6 made in paragraph 3 of the complaint, namely --

7 THE COURT: Of the complaint. I have an affidavit
8 in support of the removal.

9 MR. MORRIS: That's what I'm referring to, yes,
10 Judge.

11 THE COURT: And for whatever reason, my
12 paragraph -- I don't have a paragraph 3. I go from paragraph
13 2 to paragraph 4. I don't know if I'm -- I'm not done --

14 MR. MORRIS: You're right. What I was referring to
15 is the paragraph preceding paragraph 4. And as I look at it,
16 it is numbered paragraph 2.

17 THE COURT: Okay. Okay.

18 MR. MORRIS: And it states they are -- that my
19 client's passport was issued by the country of Jamaica in the
20 name of Michael A. Ivery. We're not going to contest that.
21 That he possessed a legal permanent resident card in the name
22 of Michael A. Ivery. We're not going to contest that. And
23 that he confirmed that he his Michael A. Ivery. We're not
24 going to contest that.

25 Those were -- that was the purpose of the case

1 agent's presence and the reason why we had said on Friday
2 that if the government needed a continuance at the end of the
3 hearing today, and we did not stipulate to those matters,
4 that there could be a continuance. But, as I've just said,
5 we don't contest those -- those issues.

6 So I'm just concerned that the government not take
7 the position that if at the end of today's hearing that they
8 put on everything they could, that they don't get a chance to
9 do a do-over, so to speak. That the issues as to who was
10 indicted in Florida, that did not require the presence of the
11 case agent.

12 MR. PAES: Your Honor, my understanding of what
13 Judge Azrack did say on Friday was I agreed that those were
14 just some of the issues, but given the early turnaround time
15 and -- which was basically to accommodate defense counsel's
16 schedule -- she did allow us that if we weren't satisfied
17 with what we were able to put together by Tuesday that we'd
18 be allow to continue this.

19 But having said that, Your Honor, I think we are
20 ready to proceed and I believe at the end, we will have
21 identified the defendant.

22 THE COURT: When was the -- when did the defendant
23 first appear?

24 MR. MORRIS: Last Friday, Judge.

25 THE COURT: Right. Okay. And what is the -- I

1 think the government has what; ten days for an identity
2 hearing?

3 MR. MORRIS: That's correct, Judge. What --

4 THE COURT: Let me just finish. If the government
5 has up to ten days for an identity hearing and they would
6 like to just adjourn today without proceeding today, without
7 -- in other words, I understand your concern not to have a
8 do-over.

9 And if you don't want a do-over, then the
10 government -- and the government doesn't want to consent to
11 not having a do-over, then I can just adjourn the matter and
12 we'll go forward on one day when everybody is ready.

13 All right. I mean, but -- because there's a
14 dispute about why a continuance would be granted. Right?
15 You have one view. Mr. Paes, is it?

16 MR. PAES: Paes. That's correct, Your Honor.

17 THE COURT: Mr. Paes has another view. And before
18 we get started, I don't like to be in a position of where I'm
19 at the end of the day and say, "Well, you don't quite have
20 enough, so I'm going to give you a continuance." And, you
21 know, I don't want to be in a position of saying you can get
22 a do-over, as Mr. Morris says.

23 So the other only -- unless Mr. Morris consents to
24 your doing it this way, we can just adjourn it unto a date
25 when you're ready.

1 MR. MORRIS: Your Honor, if I just might add. The
2 reason -- first of all, we would like to go forward today. I
3 would like to -- I would like to --

4 THE COURT: I understand. But if the government
5 doesn't have -- because it's short-term, the government
6 doesn't have the witnesses it needs, then I'm going to give
7 them a continuance.

8 MR. MORRIS: Your Honor, I would like to explain
9 the reason why we asked for a short date for the hearing.

10 The reason is that I have a viable bail application
11 for my client, but the government has informed me that
12 they've lodged a detainer against my client based exclusively
13 on the indictment in Florida in this case.

14 If the indictment is not of my client and is of
15 someone else, then they would not -- that then there would
16 also be no reason for that detainer, and I would be able to
17 get my client out on bail.

18 THE COURT: But I'm a little lost. I'm not sure
19 what you mean.

20 MR. MORRIS: In other words, the issue in this case
21 is who was indicted down in Florida.

22 THE COURT: Well, I understand that. But how can
23 there be a detainer if we've already arrested Mr. Ivery on
24 the warrant that was issued? I mean, at one -- either
25 he's -- do you follow what I'm saying?

1 MR. MORRIS: Well, Your Honor, my client is -- up
2 until the time of his arrest, he has been here legally. He
3 has a permanent resident card and there was no question about
4 his being in the country legally. When he was arrested on
5 this case, it was at that point that immigration and customs
6 enforcement --

7 THE COURT: Oh, I see. There's an immigration
8 detainer is what you're talking.

9 MR. MORRIS: Yes.

10 THE COURT: I'm sorry. I didn't understand that.
11 That's what you're saying.

12 MR. MORRIS: Yes. And so they lodged that detainer
13 based exclusively on the indictment in Florida --

14 THE COURT: Right.

15 MR. MORRIS: -- which might not be of my client.

16 THE COURT: Right. No, I understand that. But --

17 MR. MORRIS: And so in terms of the balance of the
18 prejudices, as we discussed before Magistrate Azrack several
19 days ago, I understand the government's concern, but my
20 concern was that it would be unfair to hold my client in
21 custody for any more time than necessary if, in fact, he's
22 not the person who was indicted in Florida. In any case, we
23 would like to proceed.

24 THE COURT: Mr. Paes, it's your choice. You want
25 to proceed today, fine. But if at the end of the proceeding

1 today, there's not enough evidence, then Mr. Ivery will be
2 found not the person here. I'm not going to -- we're not
3 going to do this twice is what I'm saying.

4 So you can ask for a continuance. It will be
5 granted if you don't feel comfortable with your evidence.
6 All right. Mr. Morris is not consenting to that, as I
7 understand it.

8 MR. PAES: I thought he was, Your Honor.

9 MR. MORRIS: Your Honor, I can make an alternative
10 suggestion, which is at the end of the evidence we can
11 readdress this issue. I mean, if it turns out --

12 THE COURT: Do you want to have an argument about
13 whether a continuance is necessary after I say that there's
14 not enough evidence, he's going to need to go get more
15 evidence?

16 MR. MORRIS: Well, I mean, I don't know the state
17 of the government's evidence.

18 THE COURT: I don't either.

19 MR. MORRIS: And, you know, perhaps they'd make an
20 argument that there is a specific piece of evidence that they
21 were unable to get within the time period that they've had.
22 But if it's -- that they have a witness who has what a
23 witness would have whatever the time period was, I think we
24 should go forward.

25 MR. PAES: Your Honor, like I said, I think we're

1 ready to go forward today with the evidence we have. But --
2 if Mr. Morris is going to allow us to --

3 THE COURT: Well, Mr. Morris said we could take it
4 up at the end of the day. At the end of the proceeding.
5 Right?

6 MR. MORRIS: Yes.

7 THE COURT: All right.

8 MR. PAES: I'm fine with that, Your Honor.

9 THE COURT: So, I mean, I will take it up at the
10 end of the proceeding. You could -- you need to call --
11 you're going to call witnesses, I take it?

12 MELISSA MAIN, GOVERNMENT'S WITNESS, SWORN

13 THE CLERK: State your full name for the record.

14 THE WITNESS: Melissa Main.

15 THE CLERK: Thank you.

16 THE WITNESS: Thank you. Good afternoon, Judge.

17 THE COURT: Good afternoon. You may proceed.

18 DIRECT EXAMINATION

19 BY MR. PAES:

20 Q Good afternoon.

21 THE COURT: Can you see from over there, Mr.
22 Morris? Are you -- do you have a good enough vantage point?

23 MR. MORRIS: (Indiscernible.)

24 THE COURT: I'm sorry.

25 MR. MORRIS: (Indiscernible.)

1 THE WITNESS: Well, I can try to move.

2 MR. MORRIS: Yes, Judge, I --

3 THE COURT: Or you can sit at the middle table if
4 you prefer.

5 MR. MORRIS: Okay. Thank you, Judge.

6 THE COURT: You may proceed, Mr. Paes.

7 MR. PAES: Thank you, Your Honor.

8 BY MR. PAES:

9 Q Good afternoon, Ms. Main. By whom are you employed?

10 A By the U.S. State Department Diplomatic Security
11 Service.

12 Q And what is your title?

13 A Special agent.

14 Q How long have you been employed by the Department of
15 State?

16 A A little over one year.

17 Q And do you have information about an investigation
18 involving an individual named Michael A. Ivery?

19 A Yes, I do.

20 Q In obtaining that information, did you speak with other
21 law enforcement agents and review reports?

22 A Yes, I did.

23 Q Now, was there an arrest warrant based on an indictment
24 in the name of Michael A. Ivery issued in the Southern
25 District of Florida?

1 A Yes, there was.

2 Q And can you tell us what the arrest warrant and
3 indictment relate to?

4 A Absolutely. The indictment related to false statements
5 on U.S. application for passport, as well as claiming to be a
6 U.S. citizen on a U.S. passport.

7 Q Okay. Now, do you know the circumstance under which Mr.
8 Michael Ivery was arrested at JFK Airport?

9 A Yes, I do.

10 Q Can you please tell us what happened?

11 A Absolutely. On April 11th, 2008, the defendant was
12 arrested at John F. Kennedy International Airport. When the
13 customs and border protection officers swiped his passport,
14 it came up that there was a warrant under that name, and he
15 was thereafter detained.

16 Q Now, when he was detained, was his passport confiscated?

17 A Yes, it was.

18 Q Have you seen a copy of the passport?

19 A Yes, I have.

20 Q And whose name is the passport in?

21 A Michael Anthony Ivery.

22 Q And do you know what country it is issued by?

23 A Yes. From Jamaica.

24 Q I'm now going to show you what is marked as Government
25 Exhibit 1.

1 MR. PAES: May I approach, Your Honor?

2 THE COURT: Yes. Have you given Mr. --

3 MR. PAES: Yes, I have, Your Honor.

4 THE COURT: -- Morris a copy?

5 MR. PAES: Yes, I have, Your Honor.

6 THE COURT: Do you have an extra copy for me by any
7 chance?

8 MR. PAES: Yes, I do, Your Honor.

9 THE COURT: All right. Thank you.

10 (Pause.)

11 THE COURT: Thank you.

12 BY MR. PAES:

13 Q Can you please tell us what is marked as Government
14 Exhibit 1?

15 A It is a copy of a Jamaican passport issued in the name
16 of Michael Anthony Ivery.

17 Q And is there a photograph on the passport copy in your
18 hand?

19 A Yes, there is.

20 Q And who is the individual on the photograph in the
21 passport?

22 A The defendant, Michael Anthony Ivery.

23 Q And is there a date of birth listed on the passport?

24 A Yes, there is.

25 Q And what is the date of birth?

1 A December 28th, 1968.

2 MR. PAES: Your Honor, I'd like to admit Exhibit 1.

3 THE COURT: Any voir --

4 MR. MORRIS: I'm sorry. Thanks.

5 THE COURT: You're offering Exhibit 1?

6 MR. PAES: Yes, Your Honor.

7 THE COURT: Mr. Morris, any voir dire?

8 MR. MORRIS: No objection.

9 THE COURT: No objection? Exhibit 1 is received.

10 (Whereupon, Exhibit 1 was admitted into evidence.)

11 BY MR. PAES:

12 Q Ms. Main, I'm now going to show you what is marked as
13 Government's Exhibit 2.

14 A Okay.

15 Q Can you please tell us what that document is?

16 A Yes. This is an NCIC entry for an arrest warrant.

17 Q What is NCIC?

18 A National Crime Information Center.

19 Q Now, was this -- was this NCIC information available to
20 officers and agents at -- who detained and arrested Michael
21 Ivery at JFK Airport?

22 A Yes, it was.

23 Q What is the name of the individual on the NCIC printout?

24 A Michael Anthony Ivery.

25 Q And is there a date of birth present on the NCIC

1 printout?

2 A Yes, there is.

3 Q And what is it?

4 A December 28th, 1968.

5 Q And is this the same name and date of birth as on the
6 defendant's passport?

7 A Yes.

8 MR. PAES: Your Honor, I'd like to admit Government
9 Exhibit 2 into evidence.

10 THE COURT: Any voir dire?

11 MR. MORRIS: No.

12 THE COURT: Any objection?

13 MR. MORRIS: No objections.

14 THE COURT: Okay. Exhibit 2 is received.

15 (Whereupon, Exhibit 2 was admitted into evidence.)

16 BY MR. PAES:

17 Q Did Mr. Ivery have any other identification on him when
18 he was arrested?

19 A Yes, he did.

20 Q And what was that?

21 A He had a legal permanent United States identity card.

22 Q And whose name was on the legal permanent resident card?

23 A Michael Anthony Ivery.

24 Q I'm now going to show you what is marked as Government
25 Exhibit 3. Can you please tell us what is the document in

1 your hand marked as Government Exhibit 3?

2 A Yes. This is a copy of a permanent resident card in the
3 name of Michael A. Ivery.

4 Q Is there a photograph on the permanent resident card?

5 A Yes, there is.

6 Q And who is the individual on the photograph on the
7 permanent resident card?

8 A It is the defendant, Michael Anthony Ivery.

9 Q Is there an alien number on the permanent resident card?

10 A Yes, there is.

11 Q And what is the number?

12 A It's Alien No. 057891832.

13 MR. PAES: Your Honor, I'd like to admit Government
14 Exhibit 3 into evidence.

15 THE COURT: Mr. Morris, any voir dire? Any
16 objection?

17 MR. MORRIS: I have no voir dire, no objection,
18 with the understanding both as to this exhibit and Government
19 Exhibit 1, that they are, in fact, photocopies of one page
20 from each of the originals.

21 THE COURT: Yes. They are obvious photocopies and
22 so -- but that aside, Exhibit 3 is received.

23 MR. PAES: Thank you.

24 (Whereupon, Exhibit 3 was admitted into evidence.)

25 BY MR. PAES:

1 Q Ms. Main, I'm now going to show you what is marked as
2 Government Exhibit 4. Can you please tell the Court what
3 that is?

4 A Sure. This is a report of investigation by the Miami
5 field office of the Diplomatic Security Service.

6 Q And can you tell us when that was issued?

7 A Yes. It was issued on May 7th, 2007.

8 Q Now, did the DSS agents in New York have this report in
9 their hands prior to the defendant's arrest on April 11,
10 2008?

11 A Yes, they did.

12 Q Can you tell me what is the alien registration number
13 provided below Michael Ivery's name on page 1 of the report?

14 A Yes. The alien registration number is A57891832.

15 Q Now, does this number match the number on the
16 defendant's permanent resident card confiscated from the
17 defendant at his arrest at JFK Airport?

18 A Yes.

19 MR. PAES: Your Honor, I'd like to admit Government
20 Exhibit 4 into evidence.

21 THE COURT: Any --

22 MR. MORRIS: No objection.

23 THE COURT: I'm sorry?

24 MR. MORRIS: No objection.

25 THE COURT: Exhibit 4 is received.

1 (Whereupon, Exhibit 4 was admitted into evidence.)

2 BY MR. PAES:

3 Q Now, Agent Main, did the defendant speak to DSS agents
4 while initially being detained at JFK Airport?

5 A Yes.

6 Q And what did he tell them, upon being asked, if he was,
7 in fact, Michael A. Ivery?

8 A He did confirm that that is his true identity.

9 Q Thank you.

10 MR. PAES: No further questions, Your Honor.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Morris, any cross examination?

13 MR. MORRIS: Yes.

14 CROSS EXAMINATION

15 BY MR. MORRIS:

16 Q Ms. Main, you're familiar with the indictment from
17 Florida?

18 A Yes, I am.

19 Q And you are familiar with the grand jury testimony which
20 gave rise to this indictment?

21 A I have not seen it, but yes, I'm aware that that
22 happened.

23 Q And on what basis are you aware of that testimony?

24 A I believe a fellow agent said something to me, but I did
25 not see it. I did not see it in the grand jury.

1 Q What did the fellow agent say to you?

2 A I'm not sure. Just that the indictment came from Miami.

3 MR. PAES: Objection, Your Honor. I don't see what
4 the relevance of what happened at the grand jury is at this
5 point.

6 THE COURT: The objection is overruled. The
7 objection is overruled.

8 BY MR. MORRIS:

9 Q The indictment in Florida is the indictment of a person
10 who went to the passport office in Miami, Dade County, on
11 July 2nd of 2004; is that correct?

12 A Yes, that is correct.

13 Q And he -- that person presented himself to a Team Metro
14 Central Passport Acceptance Agency in Miami, Florida; is that
15 correct?

16 A Yes.

17 Q And that person put in a passport application; is that
18 correct?

19 A Yes.

20 Q And that person presented a birth certificate with that
21 passport application; is that correct?

22 A Yes.

23 Q And that passport application was in the name of
24 someone, Larry O'Neal Jones; is that correct?

25 A That is correct.

1 Q That was the name that was used; is that correct?

2 A That is correct.

3 Q And that person executed that application for the U.S.
4 passport in Miami, Florida on July 2nd of 2004; is that
5 correct?

6 A Yes.

7 Q Have you compared the signature on that passport
8 application to the signature on Mr. Ivery's passport,
9 Government Exhibit 1?

10 MR. PAES: Objection, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: Sorry. Can you repeat that?

13 BY MR. MORRIS:

14 Q Have you compared the signature on the passport
15 application submitted on July 2nd of 2004 in Miami,
16 Florida --

17 A Mm-hmm.

18 Q -- to the signature on the passport that Mr. Ivery used
19 in entering into the United States recently, namely in
20 Government Exhibit 1?

21 A I believe you're referring to the Jamaican passport, and
22 no, I have not compared those two.

23 Q Did you mean to say the Jamaican passport?

24 A No, I did not compare the DS-11 application signature to
25 the Government Exhibit 1, Jamaican passport.

1 Q Are you aware of any government investigator who has
2 made that handwriting comparison?

3 A I'm not aware of any, no.

4 Q You're aware that there was an investigation in Miami,
5 Florida in connection with the passport application that was
6 made there on July 2nd, 2004; is that correct?

7 A Yes.

8 Q And you're aware that two people were investigated as to
9 that passport application; is that correct?

10 A I'm not aware of that, no.

11 Q Have you read Government Exhibit 4?

12 A Yes, I have.

13 Q And does Government Exhibit 4 indicate that there is an
14 investigation of two different individuals who were
15 associated with the Jones record?

16 A I believe you're referring to the true identity of who
17 Jones is and, yes, I believe an investigation was done into
18 him, too, but I'm not aware of it. I have no case details on
19 that.

20 Q You have the details that are contained in Government
21 Exhibit 4; is that correct?

22 A I believe there are details in there, but I'm not aware
23 of them right now. I cannot recollect them right now.

24 Q Have your read Government Exhibit 4?

25 A Yes, I have.

1 Q And your memory be refreshed if you were to see
2 Government Exhibit 4?

3 A Absolutely.

4 Q Let me direct your attention to page 2 of Government
5 Exhibit 4, and ask you if that refreshes your recollection
6 that two individuals associated with the Jones record were
7 investigated.

8 THE COURT: Are you asking her to review the whole
9 page or is there a particular portion of the page that you
10 would like her to review?

11 BY MR. MORRIS:

12 Q Why don't I ask you to review the third full paragraph
13 on page 2 of Government Exhibit 4.

14 A Yes. This refreshes my memory.

15 Q Okay. And does that -- now that your memory is
16 refreshed, there were two different individuals associated
17 with the Jones record, who were investigated; is that
18 correct?

19 A Yes.

20 Q And one of the photographs appear to match the
21 photograph that was provided with the passport application;
22 is that correct?

23 A Yes.

24 Q And the other photograph did not match the photo of the
25 person of the photo provided with the passport application;

1 is that correct?

2 A Yes.

3 Q Are you also aware that there was an investigation of
4 corruption of the Team Metro Passport Application Acceptance
5 Office?

6 A Yes.

7 Q And that that corruption involved criminal activity
8 associated with the fraudulent issuance and acceptance of
9 passport applications?

10 A Yes.

11 Q And that, in fact, one of the people investigated was a
12 Nelson Diaz?

13 A Yes.

14 Q And Nelson Diaz was the person who, in fact, had
15 accepted this passport application; is that correct?

16 A Yes.

17 Q And that Nelson Dias admitted to investigators that he
18 deviated from established and accepted procedures in
19 accepting initial processing of U.S. passport applications?

20 A Yes.

21 Q And that Nelson Diaz said that at times he accepted pre-
22 signed U.S. passport applications from applicants?

23 A Yes.

24 Q And he claimed -- that Nelson Diaz claimed these federal
25 investigators that he would ask the applicant to sign again

1 on a separate piece of paper so he can compare the
2 signatures?

3 A Yes.

4 Q Are you aware that he -- whether he provided a separate
5 piece of paper, which showed the signature of the person who
6 presented this application at the passport office in Miami?

7 A It's my understanding, I believe he did not.

8 Q And that Nelson Diaz also admitted to investigators that
9 he processed U.S. passport applications from applicants who
10 did not provide required supporting proof of identity and
11 citizenship; is that correct?

12 A Yes, that's in the report.

13 Q And that he -- but Nelson Diaz said he would affix a
14 note of some kind advising to this situation, right?

15 A Mm-hmm. Yes.

16 Q But you're not aware of any such note, are you?

17 A No.

18 Q In connection with this application?

19 A No.

20 Q And are you aware that the agents then presented Nelson
21 Diaz with this particular passport application in the name of
22 Michael Ivery; is that correct?

23 A Yes.

24 Q And that he did not recall in particular accepting or
25 initially processing this application; is that correct?

Main - Cross

1 A I do recall that on the report, yes.

2 Q And that -- but he did see that this application was one
3 that he had, indeed, processed; is that correct?

4 A Yes.

5 Q And that agents and investigators presented him with
6 discrepancies that existed in this particular passport
7 application; is that correct?

8 A Yes.

9 Q And that he admitted that there was an error on his part
10 in properly verifying the information; is that correct?

11 A Yes.

12 Q And the agents also spoke with, particular, Maria Daihla
13 Maliera (phonetic); is that correct?

14 A Yes.

15 Q Who was the special projects coordinator and head of the
16 Team Metro Passport Application Acceptance Office; is that
17 correct?

18 A Yes.

19 Q And the investigator showed her the passport
20 applications and the various materials connected with the
21 investigation of this passport application; is that correct?

22 A Yes.

23 Q And that she said that there was a discrepancy in that
24 material; is that correct?

25 A Yes.

1 Q In fact, a discrepancy that was significant; is that
2 correct?

3 A I don't recall that wording, but I could be refreshed.

4 Q Do you recall a discrepancy that was troubling?

5 A I don't recall the wording.

6 Q But you haven't viewed this application. Would looking
7 at it refresh your recollection?

8 A Yes.

9 Q Direct your attention to page 4 --

10 THE COURT: Of what?

11 MR. MORRIS: Of Government Exhibit 4.

12 BY MR. MORRIS:

13 Q And direct your attention to the third to last
14 paragraph.

15 A Yes.

16 Q Does that refresh your recollection?

17 A Yes.

18 Q And that report of investigation indicated that Ms.
19 Valero, who was the special projects coordinator and head of
20 the Team Metro Passport Application Acceptance Office, found
21 the discrepancy significant; is that correct?

22 A Yes.

23 Q And she found the discrepancy troubling; is that
24 correct?

25 A Yes.

1 Q And there's no indication that Mr. Nelson Diaz, who
2 processed this application, was able to provide any
3 description of the person who came in and submitted the
4 application; is that correct?

5 A That's correct.

6 MR. MORRIS: Your Honor, I have no further
7 questions.

8 THE COURT: Mr. Paes.

9 REDIRECT EXAMINATION

10 BY MR. PAES:

11 Q Ms. Main, has the defendant used a name other than
12 Michael A. Ivery in the past?

13 A Yes.

14 Q And what is the name used by the defendant?

15 A Larry O'Neal Jones.

16 Q And where did the defendant use this name? I mean, on
17 what did he use this name?

18 A He used it on a DS-11 application for a U.S. passport.

19 Q Okay. And where and when did he fill out this passport
20 application?

21 A He filled it out in July, 2004, in Miami.

22 Q And the defendant -- did the defendant provide a
23 photograph with that passport application?

24 A Yes. A photograph was provided.

25 Q I'm now going to show you what's marked as Government

1 Exhibit 5. Can you please tell the Court what that is?

2 A Yes. This is a DS-11 application for a United States
3 passport.

4 Q Is there -- and whose name is that in?

5 A Larry O'Neal Jones.

6 Q Is there a photograph attached on that application?

7 A Yes, there is.

8 Q And who is that photograph of?

9 A It is of the defendant, Michael Anthony Avery [sic] --
10 Ivery. Excuse me. Michael Anthony Ivery.

11 Q And how do you know that?

12 A Well, I can tell, because the picture here on the
13 application associated with Larry O'Neal Jones matches the
14 individual in the courtroom. The defendant in the courtroom.
15 As well as the driver's license photos and past applications
16 for the legal permanent resident card, as well as this
17 application, match the defendant.

18 MR. PAES: Your Honor, I'd like to admit Government
19 Exhibit 5 into evidence.

20 THE COURT: Mr. Morris.

21 MR. MORRIS: No objection with the understanding
22 that it's a photocopy, Your Honor.

23 THE COURT: Yes. It's a photocopy, and with that
24 understanding, Exhibit 5 is received.

25 (Whereupon, Exhibit 5 was admitted into evidence.)

1 BY MR. PAES:

2 Q Now, how else do you know that the defendant, Michael A.
3 Ivery, was the individual who filled out this application for
4 U.S. passport in the name of Larry O'Neal Jones?

5 A Well, the Diplomatic Security special agents down at the
6 Miami field office conducted an investigation, and throughout
7 their investigation, they were told by a confidential
8 informant that the defendant, Michael Ivery, is a co-
9 conspirator in a passport fraud ring, and they -- this
10 confidential informant stated that Larry O'Neal is, in fact,
11 Michael Ivery.

12 Q Now, is there any other information the confidential
13 informant provided to DSS about the defendant, Michael Ivery?

14 A Yes. They provide -- the confidential informant
15 provided information that Michael Ivery worked at a
16 restaurant called John Michaels in New York. He -- well, he
17 owned the restaurant is what the confidential informant said.

18 Q Now, did defendant actually own this restaurant?

19 A No. He worked at John Michaels --

20 Q Okay. He worked --

21 A -- in New York.

22 Q -- at the restaurant?

23 A He did work at the restaurant in New York, yes.

24 Q Ms. Main, how can a citizen of Jamaica, who is not a
25 legal permanent resident, travel to the U.S.?

1 MR. MORRIS: Objection.

2 THE COURT: What's the grounds?

3 MR. MORRIS: It's speculative.

4 THE COURT: That objection is overruled.

5 MR. MORRIS: Irrelevant.

6 THE COURT: I'll hear it. I'll see -- I'll see
7 what the relevance is. I'll make -- but I'll permit some
8 questioning in this area. But the form of the question is a
9 little confusing to me. So maybe you need to restate.

10 BY MR. PAES:

11 Q How does someone, who is a citizen of Jamaica, that
12 doesn't have a legal permanent resident [sic] in the United
13 States travel to the U.S. either on business or on pleasure?

14 MR. MORRIS: Objection.

15 THE COURT: Overruled. Do you understand the
16 question?

17 THE WITNESS: Yes, I do, Your Honor.

18 THE COURT: All right.

19 A By applying for a non-immigrant Visa.

20 BY MR. PAES:

21 Q Now, when did the defendant become a legal permanent
22 resident?

23 A In July of 2006.

24 Q Is it February of 2006?

25 A February of 2006, yes.

1 Q Now, had the defendant applied for such a non-immigrant
2 visa prior to becoming a legal permanent resident in 2006?

3 A Yes.

4 Q And when was that?

5 A In both 2002 and 2003, the defendant applied for a non-
6 immigrant visa to come to the United States, but he was
7 denied both times.

8 Q And so what did the defendant, Michael Ivery, do after
9 his two visa applications were denied in '02 and '03?

10 A After his visa applications were denied, the following
11 year in 2004, the defendant executed an application for a
12 U.S. passport in Miami.

13 Q Thank you.

14 MR. PAES: No other questions, Your Honor.

15 THE COURT: Mr. Morris, any recross?

16 MR. MORRIS: I do.

17 RECCROSS EXAMINATION

18 BY MR. MORRIS:

19 Q In regard to the answer you gave to the last question,
20 that is your conclusion; is that correct?

21 A No, that is a fact that he did apply in July of 2004 for
22 a passport in Miami.

23 Q In your opinion?

24 A No, there is an individual with that picture matching
25 that description applying for a passport.

1 Q What you're saying is that someone applied for a
2 passport with that photograph; is that correct?

3 A Yes.

4 Q And similarly at the beginning when you said that Mr.
5 Ivery had used Larry O'Neal Jones in an application for U.S.
6 passport on July 2nd, 2004, that is your opinion based upon
7 what you know about the case; is that correct?

8 A That is based on the relevant facts of the case, yes.

9 Q On the relevant facts that as you have testified to them
10 here today; is that correct?

11 A Yes, that's correct.

12 Q You don't know -- you now that Nelson Diaz, the passport
13 agent who processed this application, has been investigated
14 for corruption; is that correct?

15 A Yes.

16 Q And you don't know whether, in fact, he looked at the
17 photograph that was used on this application; is that
18 correct?

19 A I don't know either way.

20 Q And you don't know whether he was being paid off to
21 process this application; is that correct?

22 A I don't know that to be true or false.

23 Q You don't know either way; is that correct?

24 A Correct.

25 Q But you do know that Nelson Diaz was being investigated

1 for corruption?

2 A Yes.

3 Q For his improper processing of passport applications?

4 A Yes.

5 Q And for his processing applications based upon documents
6 which -- or the lack of documents, which would have been
7 appropriate for processing the application; is that correct?

8 A Yes.

9 Q And so you don't know whether the photo on the
10 Government Exhibit 5 is, in fact, the photo of the person who
11 showed up at the office on July 2nd of 2004; is that right?

12 A Correct. I don't know either way.

13 Q Now, in fact, you don't have any -- beyond the
14 application itself, you have no other evidence that Mr. --
15 that Mr. Ivery was in Miami, Florida on July 2nd of 2004; did
16 you?

17 A I cannot recollect right now.

18 Q Is there any other source of information that you would
19 want to look at to refresh your recollection in order to
20 answer that question?

21 A Not that I know of right now, no.

22 Q In fact, you're not aware of any other evidence, besides
23 what the government has presented in Government Exhibit 5,
24 that Michael Ivery, my client here today, was ever in Miami,
25 Florida; is that right?

1 A I don't recollect anything about that.

2 Q You don't recollect any affirmative evidence that he was
3 in Miami, Florida at any time; is that correct?

4 A Affirmative or negative, yes, I do not recollect.

5 Q Now, you have looked at the indictment in this case; is
6 that correct?

7 A Yes.

8 Q And it is an indictment against a single person; is that
9 right?

10 A Yes.

11 Q It is not an indictment, it is not an indictment
12 charging a conspiracy; is that correct?

13 A Correct.

14 Q And in terms of the information provided by the
15 confidential informant, that information involved whether Mr.
16 Michael Ivery might have been in -- connected with a passport
17 fraud ring conspiracy; is that correct?

18 A Yes.

19 Q But that information didn't specifically have to do with
20 whether my client, Mr. Michael Ivery, who sits in court
21 today, was in Miami, Florida on July 2nd of 2004; is that
22 correct?

23 A I presume so.

24 Q You presume that that it's correct that the
25 conspirator -- that the confidential informant didn't have

1 information on that issue; is that right?

2 A I don't know either way.

3 Q You don't know either way. Thank you.

4 MR. MORRIS: I have no further questions.

5 THE COURT: Mr. Paes, any further redirect?

6 MR. PAES: None, Your Honor.

7 THE COURT: All right. Thank you. You may step
8 down.

9 THE WITNESS: Thank you very much, Your Honor.

10 MR. MORRIS: Can we make argument, Judge?

11 THE COURT: You can.

12 MR. MORRIS: Your Honor, I think it's clear that
13 the government has not shown that my client is the person who
14 is indicted in Miami, Florida for being present in Miami,
15 Florida on July 2nd of 2004.

16 All the indictment says is that someone presented
17 false information to the passport office in Miami on July 2nd
18 of 2004, as laid out in the indictment. It does not provide
19 any indication on the face of the indictment or based upon
20 the testimony that the person who appeared there was my
21 client. Only one person is charged in this indictment and
22 the person charged was the person who actually physically
23 appeared in that passport office on July 2nd of 2004.

24 What we do know is that the person who processed
25 this passport was a corrupt passport official. Didn't

1 process the applications correctly. Either didn't have the
2 proper documentation or used improper documentation. Kept no
3 records of his improper acts that the witness was aware of,
4 and, in fact, the government has nothing to show that my
5 client is the person who appeared in that passport office on
6 July 2nd of 2004. In fact, they can't even present evidence
7 my client was ever in Miami, Florida.

8 All the government has shown is that my client is
9 my client. That Mr. Michael Ivery is here in court today,
10 but not that he's the person who appeared in the passport
11 office in Miami, Florida.

12 It's not a conspiracy indictment. So even if the
13 government were to claim that my client had some connection
14 with whoever appeared in the passport office on July 2nd of
15 2004 in Miami, Florida, that's not what's being charged in
16 this indictment.

17 The government hasn't met its burden of proof by a
18 preponderance, and I would ask that the Court find that the
19 government hasn't shown his identity and dismiss the
20 complaint.

21 THE COURT: Mr. Paes.

22 MR. PAES: Your Honor, despite Defense counsel's
23 attempts to turn this into a mini trial, I think the only
24 issue under Rule 5(C) is whether the indictment and the
25 arrest warrant were issued for Michael A. Ivery, the

1 defendant present here. And I believe looking at the
2 evidence, looking at the passport, the information, the data
3 that was provided for Michael A. Ivery, I believe that's who
4 this -- the government has shown that that is the Michael A.
5 Ivery, born, I believe, December, '68. And I believe that's
6 the relevant evidence right here.

7 Defendant was -- was arrested based on the
8 indictment. And so the only thing the government needs to
9 show, Your Honor, is the fact that the government -- the
10 defendant is, in fact, the individual was indicted and for
11 whom the arrest warrant was issued by Southern District of
12 Florida. And we believe the defendant has -- we believe the
13 government has done that.

14 THE COURT: All right. And I believe the
15 government has met its burden of proving that the person who
16 is in court here is the person who is wanted in Florida on
17 the indictment. The question of guilt, of course, is -- and
18 there are substantial arguments that could be made about
19 whether Mr. Ivery is -- actually committed the crime.

20 But the Court is satisfied that the evidence proves
21 that he is the person who was named in the indictment and who
22 is wanted in the Southern District of Florida for the offense
23 charged there.

24 So do we need to -- do you want to address bail now
25 or not? You don't want to address bail, I take it, at this

1 point? A removal in custody, Mr. Morris.

2 MR. MORRIS: Your Honor, as I said at the
3 beginning, the government has told me that they have a
4 detainer. So it doesn't make any sense at this point to
5 address the bail issue. I would ask that bail be addressed
6 down in Florida.

7 THE COURT: All right. I'll note that on the
8 removal, on the commitment order.

9 (Pause.)

10 THE COURT: All right. Is that -- is there any
11 other matter to address today?

12 MR. PAES: No.

13 MR. MORRIS: No, Judge.

14 THE COURT: All right. We're adjourned. Thank
15 you.

16 MR. PAES: Thank you.

17 (Proceedings concluded 3:37 p.m.)

18 I, CHRISTINE FIORE, court-approved transcriber and
19 certified electronic reporter and transcriber, certify that
20 the foregoing is a correct transcript from the official
21 electronic sound recording of the proceedings in the above-
22 entitled matter.

23 _____ April 22, 2008

24 Christine Fiore, CERT

25 Transcriber

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